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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly a brief interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 51/106 and Economic and Social Council decision 1997/269.

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I. INTRODUCTION

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/367, A/48/600, A/49/651, A/50/734 and A/51/496 and A/51/496/Add.1) and to the Commission on Human Rights (E/CN.4/1992/31, E/CN.4/1993/45, E/CN.4/1994/58, E/CN.4/1995/56, E/CN.4/1996/61 and E/CN.4/1997/57). The mandate, initially articulated in Commission resolution 1991/74 and extended most recently by the Commission in its resolution 1997/60 of 16 April 1997 (approved by the Economic and Social Council in its decision 1997/269 of 22 July 1997), requires the Special Rapporteur to make a study of the violations of human rights by the Government of Iraq.

2. The priority concerns of the international community with regard to the situation of human rights in Iraq are referred to in the resolutions which the various competent organs of the United Nations have adopted over the past seven years, in particular General Assembly resolution 51/106 and Commission resolution 1997/60, which are the most recent. In resolution 1997/60, the Commission called upon the Government of Iraq to abide by its freely undertaken obligations under international human rights treaties and international humanitarian law, and to respect and ensure the rights of all individuals, irrespective of their origin, ethnicity, gender or religion, within its territory and subject to its jurisdiction; to bring the actions of its military and security forces into conformity with the standards of international law, in particular those of the International Covenant on Civil and Political Rights; to cooperate with United Nations human rights mechanisms, in particular by receiving a return visit by the Special Rapporteur to Iraq and allowing the stationing of human rights monitors throughout Iraq pursuant to the relevant resolutions of the General Assembly and the Commission on Human Rights; to restore the independence of the judiciary and abrogate all laws granting impunity to specified forces or persons killing or injuring individuals for any purpose beyond the administration of justice under the rule of law as prescribed by international standards; to abrogate all decrees that prescribe cruel and inhuman punishment or treatment and to ensure that torture and cruel punishment and treatment no longer occur; to abrogate all laws and procedures, including Revolution Command Council Decree No. 840 of 4 November 1986, that penalize free expression and to ensure that the genuine will of the people shall be the basis of authority of the State; to cooperate with the Tripartite Commission to establish the whereabouts and resolve the fate of the remaining several hundred missing persons, including prisoners of war, Kuwaiti nationals and third country nationals victims of the illegal Iraqi occupation of Kuwait; to cooperate with the Working Group on Enforced or Involuntary Disappearances for that purpose, and to pay compensation to the families of those who died or disappeared in the custody of the Iraqi authorities, through the mechanism established by the Security Council in resolution 692 (1991) of 20 May 1991; to cease immediately its repressive practices aimed at the Iraqi Kurds in the north, Assyrians, Shi'a, Turkomen, the population of the southern marsh areas, where drainage projects have provoked environmental destruction and a deterioration of the situation of the civilian population, and other ethnic and religious groups; to cooperate with international aid agencies and non-governmental organizations to

provide humanitarian assistance and monitoring in the northern and southern areas of the country; to release immediately all Kuwaitis and nationals of other States who may still be held in detention; to ensure equitable distribution without discrimination to the Iraqi population of the humanitarian supplies purchased with the proceeds of Iraqi oil, in implementation of Security Council resolution 986 (1995) and the memorandum of understanding with the Secretary-General of May 1996 on that issue, and cooperate with international humanitarian agencies for the provision without discrimination of relief to those in need throughout Iraq; and to cooperate in the identification of mine fields existing throughout Iraq with a view to facilitating their marking and eventual clearing.

3. The Commission on Human Rights also noted in its resolution 1997/60 that there has been no improvement in the situation of human rights in Iraq, and strongly condemned the massive and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, resulting in an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror; the suppression of freedom of thought, expression, religion, information, association, assembly and movement through fear of arrest, imprisonment and other sanctions, including the death penalty; summary and arbitrary executions, including political killings, enforced or involuntary disappearances, routinely practised arbitrary arrests and detention, and consistent and routine failure to respect due process and the rule of law; and widespread, systematic torture in its most cruel forms, the enactment and implementation of decrees prescribing cruel and inhuman punishment, namely mutilation, as a penalty for offences, and the diversion of medical care services for such mutilations.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. Since his visit in January 1992 and despite the request renewed in the above-mentioned resolutions of the General Assembly and the Commission on Human Rights that the Government of Iraq cooperate with human rights mechanisms, in particular by receiving a return visit of the Special Rapporteur to Iraq and allowing the stationing of human rights monitors throughout the country, the Special Rapporteur has not yet received an invitation for a return visit, and the Government of Iraq has not altered its repeated refusal to deny the stationing of human rights monitors throughout the country.

5. Notwithstanding the persistent absence of cooperation on the part of the Government of Iraq, the Special Rapporteur has received much assistance and information from governmental, intergovernmental and non-governmental sources, and by sending human rights monitors to neighbouring countries he has also received information from individuals connected in one way or another with the situation in Iraq. He has also received several well-documented reports describing the situation in Iraq, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern, which have proved very helpful.

6. On 15 October 1996, the Special Rapporteur submitted a preliminary report (A/51/496) to the General Assembly at its fifty-first session. On

8 November 1996, the Special Rapporteur submitted an addendum to that report (A/51/496/Add.1), in which he described the results of a mission undertaken to the Islamic Republic of Iran to receive testimonies and reports from Iraqi citizens who had crossed the border as a result of the fighting that took place in northern Iraq in early September 1996, who claimed to be victims of or eyewitnesses to human rights violations committed by the Iraqi Army and Iraqi Security, particularly in the city of Arbil and its surrounding areas.

7. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Iraq, the Special Rapporteur sent a team of two human rights officers to Jordan and Kuwait in January 1997 to receive testimonies and other information from refugees and other persons of interest arriving from Iraq and follow up on the question of missing Kuwaitis. United Nations human rights officers continue to be sent to such places, where information may be received from persons claiming to have suffered or to have witnessed violations of human rights perpetrated by the Government of Iraq.

8. On 6 February 1997, the Special Rapporteur submitted a report (E/CN.4/1997/57) to the Commission on Human Rights at its fifty-third session.

9. In the above-mentioned reports, the Special Rapporteur described violations of civil and political rights in Iraq, the general humanitarian situation and the situation in northern Iraq. He concluded that there has been essentially no improvement in the situation of human rights in Iraq, and that the prevailing legal and institutional framework through which legislative, executive and judicial powers continue to be exercised in Iraq is not in conformity with established international norms governing human rights. Those norms require that the authority of the Government should be based on the will of the people, and that that will should be expressed in genuine elections in which everyone is entitled to participate either directly or through freely chosen representatives. Further, the validity of that electoral process and its essential meaning relies heavily on respect for a host of other closely related human rights - such as freedom of association, freedom of thought, freedom of expression (including of the media) and security of personal integrity - which do not exist in Iraq. Fundamentally, the Special Rapporteur concluded that all power lies in the hands of a cruel dictatorship. As concerns the humanitarian situation in Iraq, the Special Rapporteur welcomed the agreement reached in May 1996 to finally implement Security Council resolution 986 (1995), following years of constant refusal by the Government of Iraq to take advantage of Security Council resolutions 706 (1991), 712 (1991) and 986 (1995). The Special Rapporteur considers the adoption of Security Council resolution 986 (1995) to be an important further step on the part of the United Nations to respond to the humanitarian situation in Iraq perpetuated by the Government of Iraq's non-compliance with various other Security Council resolutions. For the benefit of the long-suffering people of Iraq, the long overdue acceptance by the Government of Iraq of the available resources is also to be viewed as positive. However, the process depends very much on the efficiency of the United Nations system of observation in ensuring an equitable distribution of the badly needed foodstuffs and medicaments through the free and unobstructed movement of United Nations observers throughout the country. With regard to the situation in northern Iraq, the Special Rapporteur criticized the imposition of military forces amounting to tens of thousands of troops, including heavy artillery and

tanks, in action against civilian targets, resulting in numerous arbitrary killings and extrajudicial executions and a number of arbitrary arrests, in clear violation of Security Council resolution 688 (1991).

10. As the Special Rapporteur continues to study the general situation of human rights in Iraq, he submits the present interim report, which is based on information received as of 31 August 1997.

III. CIVIL AND POLITICAL RIGHTS

11. While the Special Rapporteur has again received allegations of all types of violations, and while he could, therefore, again present a long list of such violations, he will here below refer only to a selection of recently received allegations by way of examples.

A. Summary, arbitrary and extrajudicial executions

12. Extrajudicial and collective executions have been reported in relation to military operations in the southern marsh area of Iraq, where civilian settlements are said to have been shelled and razed. The following are three examples of the allegations received:

(a) In Al-Ghizlan in Nasseriyah, a number of women and children of the tribe of Bani Sa'id were allegedly killed in early April 1997 after an attack on their civilian settlement by government forces using heavy artillery. About 50 houses were reportedly set on fire;

(b) In Amarah, similar attacks to that described above were reported in the same period on the towns of Al-Eliwia, Abo Ashra, Al-Adil and Al-Salam;

(c) In May 1997, the towns of Al-Tar and Souq Al-Sheeukh in the Governorate of Nasseriyah were reported to have been attacked by government forces using heavy artillery, causing arbitrary destruction, injury and death.

13. In spring 1997, hundreds of political detainees are said to have been executed in Abu Ghraib Prison, near Baghdad. Between 12 February and 21 March 1997, some 200 persons are said to have been executed in Abu Ghraib Prison. The executions were reportedly carried out in batches two times per week, i.e., on each Sunday and Wednesday. A Special Committee made up of three "judges" directly connected to the Presidential Bureau reportedly undertook to prepare lists of names of detainees to be executed on each day. The executions are said to have increased in number after a visit to the prison on 12 March 1997 by Qusai Hussein (son of Saddam Hussein), who is in charge of the Special Security and military forces throughout the country. In accordance with orders issued by Qusai Hussein during his visit, the prison administration and the Judges Committee reportedly prepared a timetable for physically liquidating all the remaining detainees who had been sentenced to death by the end of March 1997. That execution campaign reportedly led to the physical liquidation of hundreds of persons in less than three weeks. Information received by the

Special Rapporteur indicates the number of executions per date, with the names and addresses of some victims provided.

14. The Special Rapporteur has received a number of allegations in which persons are said to have died under torture in detention or following poisoning while in prison. According to the information received, 10 persons were alleged to have died in May 1997 as a result of poisoning. They were all returning refugees from Saudi Arabia, who had been arrested on arrival in the middle of May 1997. They were reportedly taken to the jail of the Directorate of Baghdad Security, where they remained for a period of 15 days; they were allegedly exposed to torture and then released. Following release, they all reportedly suffered serious effects: their hair fell out, they became paralysed and had severe bleeding. Before dying, the victims stated that prison personnel had forced them to eat unusual food during the last days of their stay in detention.

15. As previously reported by the Special Rapporteur, membership in certain political parties is specifically outlawed and is punishable by death. Extrajudicial, summary or arbitrary executions of suspected government opponents continue to be reported, with others living under immediate threat. Examples are as follows:

(a) On 2 February 1997, 11 members of the Al-Nadha Movement were killed by gunfire from the Iraqi Special Security Services. The names of the dead have been provided to the Special Rapporteur;

(b) Eighteen supporters of the Iraqi National Congress (INC) were allegedly arrested in April 1996 and brutally tortured at the so-called "legal" department attached to the headquarters of the Mukhabarat in Baghdad. An extraordinary tribunal seated in the same building is said to have sentenced them all to death in October 1996. They are currently believed to be held at a special wing in Abu Ghraib Prison, awaiting execution. The Special Rapporteur is in possession of a list of their names;

(c) The Special Rapporteur received another list identifying 10 Iraqi opposition members who were arrested in May 1996. All 10 have allegedly been tortured at the headquarters of the Mukhabarat in Baghdad, and are believed to be awaiting execution in Abu Ghraib Prison.

16. As in previous years, there have been numerous reports that the Government of Iraq has executed a number of persons allegedly involved in plotting against President Saddam Hussein, including some members of his family and tribe. High-ranking civilian, military and tribal leaders were reported among those executed. On 26 June 1997, the Government of Iraq reportedly started arresting military officers in Baghdad, Karbala Governorate and Salahuddin Governorate on charges of being involved in a plot to overthrow the President. Those arrested were members of the Republican Guards, the General Security Services and the regular Army; most are Sunnis from Baghdad, Mosul, Tikrit, Faluja and Ramadi. Reports indicate that at least 100 officers were arrested, with some of them being executed. The Special Rapporteur is in possession of the names and ranks of several of the persons arrested. As far as can be ascertained, the officers accused with the purported attempted coup d'état were executed, with Udai Hussein delegated by his father President Saddam Hussein to supervise the

investigations and executions in person. Whether or not a coup d'état had in fact been attempted and irrespective of whether or not those accused were in fact responsible or at all involved, the reported physical liquidation of the officers, which follows previous large-scale executions of army officers, is in keeping with the established practice of periodic summary and extrajudicial executions of personnel whose loyalty to the President is suspected.

17. Death in custody inside Iraq's centres of detention has reportedly increased considerably. In the prisons of the Governorate of Amarah, a large number of detainees are said to be near death because of lack of appropriate health-care facilities and inadequate food. In the central jail of Basrah, five detainees are reported to have died after they contracted tuberculosis.

B. Arbitrary arrest and detention

18. Arbitrary arrests and detentions are still said to be common throughout Iraq. Testimonies received recount an already well-established pattern of individual arrests without warrant or charge, leading to arbitrary detention, often for long periods of time without access to a lawyer and without being brought before a judicial instance. Mass arrests were also reported, particularly from the southern part of the country. Upon arrest, inhuman treatment and cruel torture reportedly still occur. Due process of law is especially ignored through the widespread practice of holding family members and close associates responsible for the alleged actions of others. That application of "guilt by association" causes widespread fear, which prevents all sorts of otherwise normal human initiatives and free associations, thereby paralysing the actions and development of civil society.

19. For example, the Special Rapporteur has received information that about 25 Iraqi families are currently detained in al-Fajir prison, in the southern Governorate of Nasseriyah. They are reportedly exposed to various types of psychological and physical torture. The said families have been detained following orders delivered by the Governor of Nasseriyah, Staff Brigadier Salah Abood, in order to provide information about their sons/brothers who escaped from the army. As another example, a number of human rights violations against the inhabitants of the villages in Um Al-Ghizlan and its surroundings in the Bani Sa'id area, in the countryside of Al-Dawaya, occurred at the beginning of April 1997. On 2 April 1997, 10 women, 10 children and a similar number of elderly men were reportedly arrested and taken under guard to Baghdad; nobody has heard any news about them since. On 3 April 1997, a large number of peasants in the Bani Sa'id area were allegedly arrested, their fate is unknown. On 4 April 1997, more arrests were made without warrant or charge, with those arrested being taken to Baghdad under guard. At the same time, troops demolished six peasant houses in Um Al-Ghizlan. They placed barricades on the roads leading into the area, and prohibited the inhabitants from leaving, thereby effectively forcibly detaining the inhabitants of the whole town.

20. In the absence of an independent judiciary and a secured due process of law for all persons in Iraq, the Special Rapporteur remains concerned about the large number of arbitrary detentions that continue to be made. The Special Rapporteur notes the large number of centres of temporary and long-term

detention that remain in operation throughout Iraq, which adds to his concern that despite some meetings of the ongoing Tripartite Commission, there has been no significant movement on the part of the Iraqi authorities to resolve the fate of the still several hundred Kuwaiti and third country nationals who disappeared subsequent to arrest during the illegal Iraqi occupation of Kuwait in 1990-1991.

21. Such reports as those recounted above are regularly received by the Special Rapporteur. As previously reported, the existing "legal" order in Iraq is fully consistent with - indeed, it supports and facilitates - such violations.

C. Freedom of expression

22. With regard to the freedom to seek, receive and impart information and ideas of all kinds, as provided in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which Iraq is a party, it should be recalled that all means of mass communication, including the press, television, radio and the news agencies, are State-owned or controlled by persons or institutions extremely close to the President or State. Not surprisingly, the Special Rapporteur has continued to receive reports about obstacles to the international free flow of information. For example, journalists are sometimes forbidden by the Government to make phone calls abroad. Foreign correspondents in the capital are said to be obliged to work from a room at the Ministry of Culture and Information. Foreign journalists also have to be accompanied wherever they go by an official from the same Ministry, who restricts their movements and evidently makes it virtually impossible to learn the genuinely held views of citizens.

23. In an effort to deprive persons of all contact with the outside world, Iraqis are banned from owning satellite dishes. On 15 April 1997, helicopters belonging to the Office of the Presidency and the Special Security reportedly circulated over the areas of Karrada, Palestine Street, Al-Mansour and Al-Qadissiya at low altitude searching for dishes which receive satellite channels. The reason for the campaign against satellite dishes is that some Iraqis who possessed dishes reportedly used to record on video cassettes news and other reports which deal with Iraq and then distribute them to friends and acquaintances. The penalty imposed on whoever is proven to have a dish is reportedly the confiscation of the entire household furniture plus imprisonment in solitary confinement until further notice; there are said to be rewards given by the Government for whoever reports the presence of a dish in any home - the reward amounting to half the value of the dish.

D. Forced displacement

24. According to the report of the Secretary-General (S/1997/685), there are more than 500,000 internally displaced persons in the three northern governorates of Iraq (Arbil, Dohuk and Suleymaniyah). Half were displaced prior to 1991, 150,000 between 1991 and 1995, 100,000 in 1996 and approximately 3,000 more in 1997. In 1994, 1995 and 1996, there were 7,200 returnees from the Islamic Republic of Iran; in the first seven months of 1997, 2,704 individuals returned.

25. At present, forcible relocations continue to take place in the context of a policy aimed at changing the demography of the oil-rich sectors of Kirkuk and Khanaquin by deporting ethnic Kurds and Turkomen families. Although the practice of forced relocation and deportation by the Government of Iraq to decrease the presence of the Kurdish and Turkoman population living in that area and to strengthen their hold on the important economic and strategic Governorate of Kirkuk is not new, the scale of those activities increased in 1997.

26. In order to increase the percentage of the Arab population in the predominantly Kurdish areas the Government of Iraq has forced entire communities to undergo internal deportation. It is reported that the real and personal property left by the deportees is then given to ethnic Arabs coming from other parts of Iraq; several villages are also reported to have been entirely destroyed. Reports and testimonies received by the Special Rapporteur indicate that the victims of displacement are almost exclusively Kurds, Turkomen and Assyrians living in the city of Kirkuk and its surroundings.

27. During 1997, cases of forced eviction and deportation seemed to occur with great frequency and as a matter of policy. Most of the displaced stated that they were given at most one week's notice to move, and were threatened with arrest if they did not comply. They were reportedly forced to move either to the southern governorates of the country or to the three northern governorates. They were allowed to take with them all their belongings only if they agreed to move to the southern governorates. Given the fact that the displaced usually move to the neighbouring northern governorates of Iraq, such as the city of Suleymaniyah, to join relatives or friends originating from the same area and sharing the same ethnicity, they have to leave their property without any compensation - property which is reportedly immediately stolen, confiscated or destroyed by the authorities.

28. On 13 May 1997, the Iraqi authorities reportedly issued orders to expel 1,300 Kurdish and Turkoman families from their homes in Kirkuk. The first wave of 37 families reportedly arrived in Chamchamal outside Suleymaniyah city on 20 May 1997. The families had been dispossessed of title to their properties in Kirkuk, as well as their food ration cards. During the last week of August 1997, Iraqi authorities reportedly notified 440 Kurdish households in the district towns of Jalula and Qara-Tepa (west of Khanaquin) to leave their homes for southern Iraq or to areas administered by the "Kurdistan Regional Government". The Special Rapporteur has received the names of several families who were deported and are currently living in Suleymaniyah. In the city of Kirkuk, Iraqi troops are reportedly conducting searches on an almost daily basis, with homes being raided late at night or at dawn. Searches are said sometimes to take all day, covering an entire residential quarter, with nobody being allowed to enter or leave the area. The reported pretext given for the searches is to find deserters and fugitives from military service, or for elements of the opposition parties. However, the real objective and concrete effect, according to reports, is to harass families - eventually forcing them to move elsewhere.

29. According to an article published on 2 April 1997 in the Al-Sharq Al-Awsat newspaper, the authorities carried out displacement of Iraqi Kurdish, Turkomen and Arab families from the Khanaquin region of Diyala. More than 1,500 citizens

from Khanaquin and 80 families from Kirkuk were reportedly forcibly displaced. Some of the women were allegedly beaten and insulted, while a number of men were arrested for refusing to obey orders to vacate and leave their homes. The families were reported to have been internally deported to regions in southern and western Iraq since the authorities prevented them from making their way to northern Iraq. The displaced families have reportedly been unable to find accommodation, and have been forced to seek refuge in the mosques of Al-Yousefiya and Al-Mahmoudiya villages, south of Baghdad, and of the Musayab region in Babylon Governorate.

30. According to information received by the Special Rapporteur, the Government of Iraq has since 1995 forcibly expropriated agricultural lands belonging to Turkomans in Kirkuk, paying only symbolic sums which are not even equivalent to one year's yield, especially from Toon Kobri north of Kirkuk to Tuz Khumatu to the south of Kirkuk. Ownership of the expropriated lands has allegedly been transferred to high-level officials of the regime, including members of Saddam Hussein's family. All the agricultural lands around the village of Turklan, which belonged to Turkoman peasants, were reportedly confiscated. The village was then demolished, and its inhabitants were displaced to the Tammuz and Al-Shaheed complexes near Tikrit. In the village of Mullah Abdullah, the agricultural lands belonging to a Turkoman peasant were also reportedly confiscated.

31. Aside from the obvious violation of property rights, it is clear that displacement leaves the affected families in a much worse economic and social situation. Tens of thousands of Kurdish and Turkoman families from Kirkuk now live in tents and camps in the region from which the Government withdrew its authorities in October 1991. Those families live in extremely harsh conditions, resulting in many deaths, especially among small children and the elderly. Many families remain without much support. They often suffer from fear and anxiety associated with loss of work, social role and home. For the most part, they depend for their survival on assistance from relief organizations and international aid provided by non-governmental organizations and the United Nations.

32. While studying the situation, the Special Rapporteur has found that the phenomenon of forced displacement appears largely if not exclusively to involve ethnic minorities. So far, the Government of Iraq has declined even to acknowledge the facts, and therefore no official statistics are available on the number of displaced persons in Iraq, and there exist no particular remedies to address the problem of displacement in Iraq.

33. It should be noted that the forced displacement of persons is not consistent with human rights norms, as proclaimed in article 13 of the Universal Declaration of Human Rights and article 12 of the International Covenant on Civil and Political Rights, which secure the freedom of movement, including the freedom to choose one's residence in one's own country. In the event that persons are displaced in circumstances which are consistent with international norms, they nevertheless have the right to live in conditions which ensure the basic rights to food, housing and health care, as well as reasonable social amenities and the enjoyment of all other human rights.

IV. THE RIGHTS TO FOOD AND HEALTH CARE

A. General situation

34. The Special Rapporteur has reported and commented upon the rights to food and health care in his previous reports to the General Assembly and the Commission on Human Rights (A/46/647, paras. 52-54, 55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138 and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 and 58; E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, paras. 89-98; E/CN.4/1995/56, paras. 44-47, 54, 67 and 68; A/50/734, paras. 41-51; E/CN.4/1996/61, paras. 30-40; A/51/496, paras. 61-86, 104-106 and 110-115; and E/CN.4/1997/57, paras. 31-40, 42 and 43).

35. According to economic reports, inflation reached 65,000 per cent at the end of 1995, and the gross domestic product shrank to below 10 per cent of its pre-1990 level. The individual purchasing power has virtually been wiped out with the collapse of the Iraqi dinar, resulting in a cumulative deterioration in the economy and in the provision of basic needs - food, medicine, and water and sanitation. Escalating prices, lower purchasing power, reduced food production and a breakdown of health services and facilities has caused a continual worsening of living standards throughout the whole country.

36. The Iraqi dinar continues to remain extremely depreciated against the United States dollar, and the price of food and other essentials outside the rationing system continues to rise. Before the announcement on 25 November 1996 that Iraq had finally agreed to United Nations terms in the food for oil deal, the Iraqi dinar (ID) had been trading at 1,650 to 1 United States dollar (US$). After the announcement, the dinar strengthened to ID 750 to US$ 1. However, by January 1997 the dinar was back down to ID 1,800 to US$ 1; in July 1997, it was trading at ID 1,485 to US$ 1.

37. Prior to the sanctions, severe clinical malnutrition was rarely seen in Iraq, and studies in Baghdad suggested a low prevalence of underweight-for-age in poorer areas. After one year of the sanctions, however, the prevalence of malnutrition was quite evident if relatively low in percentage of population. In a household survey conducted during August 1991 by an international team from Harvard University, 9.2 per cent of children in Iraq's 15 governorates were found to be malnourished. Worse, by June 1995 a survey conducted in Baghdad by a team supported by the Food and Agriculture Organization of the United Nations showed a level of 28 per cent general malnutrition.

38. Prior to April 1997, the food ration provided by the Government of Iraq satisfied about 50 per cent of daily caloric need, and did not meet the full requirement for energy, protein and most essential vitamins and minerals. Furthermore, economic difficulties prevented many Iraqi families from fully complementing their food requirements through market purchases. Consequently, their nutritional status has deteriorated significantly. Young children have been the group most acutely affected. During polio national immunization days on 12 to 14 April 1997, the Ministry of Health, in collaboration with the United Nations Children's Fund and the World Food Programme (WFP), conducted a nutrition status survey in 87 primary health centres in central and southern

Iraq. Over three days, 15,000 children under five years of age were examined for weight, height/length and precise age. The survey showed that 24.7 per cent of the children under five years of age were malnourished, according to World Health Organization reference criteria of low weight-for-age. Further, the survey showed chronic malnutrition (low height-for-age) in 27.5 per cent of the cases, and acute malnutrition (low weight-for-height) in 8.9 per cent. Results show that almost the entire young child population has been affected, with a shift in their nutritional status towards malnutrition common throughout all governorates (although the levels vary). The pattern of malnutrition by age shows that those under two years are most at risk. There is no significant sex or urban/rural difference.

B. Food for oil agreement

39. In his reports to the Security Council (S/1997/419 and S/1997/685), the Secretary-General provided information on the distribution of humanitarian supplies throughout Iraq pursuant to resolution 986 (1995) and its successor resolution 1111 (1997), including the implementation of the United Nations Inter-Agency Humanitarian Programme in the three northern Governorates of Dohuk, Arbil and Sulaymaniyah.

40. As of 30 May 1997, a total of 132 out of 151 international observers were deployed in central and southern Iraq. Some 41 geographical observers are fielded daily, and are deployed in pairs to work on a tour of five days in Baghdad and the surrounding governorates, followed by a longer tour of 12 days in the more distant governorates. In the food sector, 22 international observers assisted by 150 national staff are deployed by WFP daily in each of the central and southern governorates, in teams consisting of one or two international observers and 10 local assistants.

41. Random spot checks of flour/food agents and households in rural and urban areas are also made by WFP to verify that the distribution of commodities is carried out efficiently and equitably. Geographical observers interview beneficiaries in the streets and markets and at food/flour agents to check whether families have received their rations and how many days each commodity lasts. WFP is conducting household surveys and spot checks to obtain more detailed information on food security issues.

42. According to the Secretary-General's reports, over the past six months United Nations personnel have enjoyed the freedom of movement according to the agreed terms, i.e., upon 24 hours advance notice. Visas have been granted to all staff promptly, and identity cards from the Iraqi Ministry of Foreign Affairs, which permit unrestricted travel throughout the country, have been issued to all observers and other staff involved in implementing resolution 986 (1995) and resolution 1111 (1997).

43. While acknowledging the importance of the fact that the Government of Iraq is cooperating with the United Nations in ensuring the relatively free and unobstructed movement of observers throughout the country, the Special Rapporteur is concerned that observers are not based permanently throughout the country with free access to any location and citizen without prior notification.

Such stationing would certainly enhance the credibility of the information gathered during the field missions. It would also avoid the problem of escorts being reluctant to visit a particular area, as noted in the most recent report of the Secretary-General to the Security Council (S/1997/685).

44. The fact that the international observers are always accompanied, while on duty, by local agents who are in fact civil servants from the Ministry of Trade or the Ministry of Health evidently does not allow for a free exchange of views between the international observers and the local population. The Special Rapporteur also notes that very often the Iraqi escorts, as well as the government drivers, act as interpreters for non-Arabic-speaking international observers. In such cases, it would seem obvious that international observers cannot rely upon the information provided through those interpreters, who are agents of a most interested party, i.e., the Government of Iraq. The Special Rapporteur can also well imagine the effective intimidation that civilian interviewees may feel in such circumstances - and how that may affect their responses to any questions which may be accurately interpreted.

45. In addition to the above, it has been reported to the Special Rapporteur that interviews with the local population can only take place in public places, such as in public streets or in market places. International observers are reported to be strictly forbidden to enter private Iraqi houses, even if they have been invited by the Iraqis themselves, which means that no private discussions can take place since there is no opportunity for exchanges in the absence of agents of the Government of Iraq.

46. The Special Rapporteur remains concerned about the actual system of distribution of foodstuffs and medicaments in Government-controlled areas. In principle, under the government ration system all Iraqi citizens, together with foreign residents in Iraq, are entitled to a ration card. Beneficiaries should receive identical quantities of rationable commodities, with the exception of children under one year, who are entitled to receive infant formula, detergent and soap. The Ministry of Trade uses 45,693 food and flour retail agents from the private sector to distribute commodities to beneficiaries. Families collect their monthly food basket with ration coupons, which retail agents present to the local distribution centres to receive the following month's stock. The Special Rapporteur has previously reported upon the problematic nature of that system, particularly for political opponents and dissidents who fear registration; evidently, the ration card system is susceptible to manipulation by the authorities against opponents. Nevertheless, in the central and southern governorates, the foodstuffs available through the food for oil arrangement continue to be distributed by the Government of Iraq through the ration card system. The United Nations humanitarian observation mission is to ensure that no manipulation or abuse occurs, and that available goods are distributed in an equitable fashion. Results of observations so far confirm that at least registered beneficiaries have received their rations, and no major discrepancies were reported in the central and southern governorates. In the northern governorates, the United Nations distributes the goods directly.

47. United Nations observers have begun to focus attention on areas of specific concern in order to verify guaranteed access to the rationing system for all segments of the Iraqi population. The United Nations Multi-Disciplinary

Observation Unit (MDOU) has produced guidelines that are being used by geographical and sectoral observers. The guidelines distinguish three possible reasons why citizens might not be receiving the resolution 986 (1995) rations to which they are entitled: (a) the person is in the process of registering, (b) the person has chosen not to register or (c) the person has been denied registration.

48. For those persons in the process of registering, the Special Rapporteur has already reported in his previous report to the General Assembly (A/51/496) that the procedure for being registered is very complex and time-consuming, and often entails bribery along the way. He recalls that in order to register applicants must first obtain a confirmation of domicile from the neighbourhood Mukhtar (Council), which must be authenticated by the neighbourhood Information Office, and an information card (containing security information) from the same Information Office. Thereafter, they must go to the neighbourhood People's Council, taking the following documents: the Civilian Affairs identity card (original and copy), the certificate of Iraqi nationality (original and copy), the marriage certificate if married (original and copy), the domicile card (original and copy), the confirmation of domicile obtained and authenticated as explained above, and the military service booklet for those discharged from service or a letter from the military unit confirming the person's ongoing military service for those not discharged from service. The supporting letter then obtained from the neighbourhood People's Council is to be brought to the head office of the Governorate's People's Councils. The letter is next taken from the Governorate's People's Councils to the Ministry of Trade. A letter from the Ministry of Trade is finally brought to the Ministry of Trade's warehouses in the area of domicile, whereupon a foodstuff's agent is designated near the place of domicile.

49. For internally displaced persons, the Special Rapporteur takes note with appreciation that their cases are carefully monitored by WFP, the United Nations Geographical Observation Unit and MDOU to ensure that all continue to receive their intended benefits. He notes that following reports that some 400 families had been evicted from Kirkuk, the United Nations Humanitarian Coordinator approached the Government of Iraq to ensure that their entitlement to resolution 986 (1995) rations had not been affected, and the United Nations has taken action to register the families who have reached Arbil and Sulaymaniyah in order to provide them with such rations. However, and unlike the northern part of Iraq where the United Nations is responsible for the distribution of humanitarian supplies, the Special Rapporteur hopes that internally displaced persons who have reached the southern governorates of Nineveh, Basrah and Nasseriyah have been registered as fast as those reaching the northern governorates, and that they are currently receiving the food ration.

50. With regard to persons who have been denied registration, the Special Rapporteur has received reports alleging that the inhabitants of the southern regions (in the marshland triangle between the cities of Nasseriyah, Basrah and Amarah), which are considered by the Iraqi Government as hiding places for its opponents, are still being denied ration cards. For example, in villages in Nasseriyah Governorate, from the region of Diwaya to the region of Fuhud and Suk Alshuyukh, in addition to the villages surrounding the nearby marsh area, there are reportedly thousands of persons who have been deprived rations. In

the north of Basrah Governorate in the regions of Qurna and in remaining marshes north of Basrah, thousands more are reportedly deprived rations. The same reportedly applies in the Governorate of Amarah, particularly towards the Iran-Iraq border. It is alleged that the system is being widely used by the Government of Iraq to reward political supporters and to silence opponents. Persons requesting a ration card must be known by the security and party organs as loyal to the Government. Persons, families and tribes accused of cooperating with the opposition are not allowed to receive coupons. That restriction may be lifted if new proof is provided of their loyalty to the President and Baath Party. Certainly, the complex system of registration and issuance of ration cards is conducive to such abuse and manipulation.

51. Finally, with regard to persons who do not wish to be registered, it should be noted that certain vulnerable groups, such as the inhabitants of the marshes, find that the process of seeking and obtaining valid identification cards places them at risk of attacks against their personal security in so far as they are immediately suspected, if not accused, of anti-government activities, or are held responsible for the real or suspected anti-government activities of their relatives. Without guarantees of due process of law, the administrative procedures relating to the governmental rationing system constitute a serious threat to many persons. The matter of possession of valid identification cards places most of the inhabitants of the remaining southern marshes, i.e., those who seek to escape from the regime or who do not want to be identified as living in the marshes, beyond the receipt of humanitarian assistance as is intended to be available to everyone without prejudice.

52. In terms of adequacy, according to figures mentioned in the report of the Secretary-General to the Security Council (S/1997/685), by the end of the first 180-day period, over 700,000 tons of food and related items had reached Iraq, accounting for some 29 per cent of the total allocation for those goods under the first distribution plan. As of 31 August 1997, a cumulative total of 1,831,101 tons had reached Iraq, accounting for some 82 per cent of the total allocation, and 1,516,378 tons had been distributed to the governorates. Applications for 98 per cent of the amount allocated to that sector had been approved by 28 August 1997, and according to the Ministry of Trade, the remainder is expected to arrive by December 1997. As of 31 August 1997, available stock and deliveries due during the following month were expected to be sufficient to ensure a full distribution of most commodities in September 1997.

53. United Nations nutritionists have concluded that the current food ration under resolution 986 (1995) provides food and nutrient supply at basic survival level. It provides 2,030 calories, which can be compared with a desirable minimum of not less than 2,500 calories per capita per day. Compared with basic survival needs, WFP estimates that the resolution 986 (1995) food basket supplies 93 per cent of the caloric needs, 100 per cent of required protein and 97 per cent of thiamine needs. However, it covers only 69 per cent of iron, 41 per cent of niacin and vitamin B12 and 13 per cent of calcium. The vegetable oil, fortified with vitamin A, has not been assessed in terms of adequacy at the individual level. Since iron deficiency is an issue of public health concern, there is scope to further improve the nutritional status of expectant women and of children through the fortification of flour with iron. Even if the ration

were to be upgraded to provide 2,500 calories per day, there might be little real impact on nutritional status unless there were significant improvements in health services, sanitation and access to clean water.

54. Any assessment of the adequacy of resolution 986 (1995) in meeting the health needs of the population is hampered by the slow and partial arrival of medicines and medical supplies. Indeed, the continuous degradation of the health sector has been exacerbated by this situation. According to information provided by the Ministry of Health, no more than 4 per cent of the medicines needed in Iraq were available during the past five months. The number of surgical operations (performed mostly for emergencies) has decreased by 17 per cent and laboratory tests by 8 per cent compared with the same period in 1996. The present low bed occupancy rate in hospitals and the low use of health facilities does not reflect the magnitude of morbidity, which would be the basis for a realistic assessment of adequacy. It is hoped that with the arrival of significant quantities of pharmaceuticals and medical supplies, it will be possible to apply standard indicators that will help to assess the health situation more adequately.

55. The Special Rapporteur recalls that the Government of Iraq has an obligation pursuant to article 2 of the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a party, which requires the Government to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, in order to fulfil its obligations under articles 11 and 12, which, respectively, stipulate the right of everyone to adequate food and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Rather than ensure the rights to food and health care for all its citizens, the Special Rapporteur notes that since the beginning of the implementation of the distribution plan the Government of Iraq has taken advantage of the provisions of resolution 986 (1995) to end its own pre-existing ration distribution and to obtain as much as possible of the oil revenues in local currency by increasing the cost of registration for the individual food ration. For example, in 1994 the individual food ration had been sold for ID 2. In January 1996, the cost of the individual food ration was reportedly raised from ID 2,100 to ID 50,045 - although the commodity quantities remained unchanged. In March 1996, the price of the individual food ration reportedly doubled again to ID 100,000.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

56. The Special Rapporteur observes that the absence of respect for the rights pertaining to democratic governance is at the root of all the major violations of human rights in Iraq insofar as that absence implies a structure of power which is autocratic and accountable only to itself, thus inherently resting on the denial and repression of fundamental rights. He notes with particular concern that extrajudicial, summary or arbitrary executions and the practice of torture continue to occur in Iraq.

57. With regard to allegations of arbitrary arrest and detention, the Special Rapporteur does not doubt that such violations take place on a wide scale, if on no other basis than his examination of the laws in place, which shows that such violations are legal and may easily occur. At the same time, the absence of an independent judiciary, coupled with a host of executive orders criminalizing far too many aspects of normal civilian conduct, prescribing disproportionate penalties and authorizing arrest and detention without judicial review or any other form of judicial authorization, lead the Special Rapporteur to conclude that a significant percentage of all arrests and detentions in Iraq are arbitrary when measured by generally accepted international standards. The Special Rapporteur expresses his deep concern at the continued detention of many political prisoners, and the recent arrests of other supporters of oppositional groups in Iraq.

58. On the basis of virtually unanimous reports and previous examination of the laws, the Special Rapporteur concludes that there is no freedom of thought, opinion, expression or association in Iraq. The absolute presidential power is exercised to silence opposition and penalize those holding dissenting views or beliefs. Because of both visible and invisible pressures, the people live in a climate of fear in which whatever they or their family members may say or do, particularly in the area of politics, involves the risk of arrest and interrogation by the police or military intelligence. In that situation, open discussion and free exchanges of views and opinions cannot possibly take place in Iraq, unless they are in support of the present presidential regime.

59. Turning to freedom of movement and residence in Iraq, the Special Rapporteur concludes that there are clear violations of those freedoms found in Iraq's law and practice. On the matter of internal deportations and forced relocations, the Special Rapporteur concludes that the Government's policy violates freedom of movement and residence, and constitutes discriminatory practices based on ethnic considerations.

60. The Special Rapporteur notes with satisfaction that the Government of Iraq is cooperating with the United Nations in the implementation of Security Council resolutions 986 (1995) and 1111 (1997). It appears that since the Government of Iraq has finally accepted the food for oil formula there has been an improvement in the enjoyment of the rights to food and health care for Iraqi citizens. Nevertheless, the Special Rapporteur emphasizes again Iraq's responsibility to take all necessary actions to ensure the full realization of the rights to food and health care for all its citizens, without discrimination of any kind. The availability of the food for oil formula through Security Council resolutions 706 (1991), 712 (1991), 986 (1995) and 1111 (1997) should not disengage the responsibility of the Government of Iraq to take other steps to the maximum of its available resources in fulfilment of its international obligations.

61. Although the Government of Iraq has accepted the stationing of United Nations humanitarian observers in the country to verify the equitable distribution of foodstuffs and medicaments purchased through the food for oil formula, the strictly limited mandate of those observers underlines the importance of stationing human rights monitors throughout the country in order to verify the equally important situation of respect for other civil, cultural, economic, political and social human rights. Indeed, insofar as the Government

of Iraq has accepted the independent observation of the humanitarian situation in terms of the human rights to food and health care, it should be prepared to accept at least the same level of surveillance for other human rights.

B. Recommendations

62. The Special Rapporteur refers to all of the recommendations made in his previous reports to the General Assembly and the Commission on Human Rights, which remain valid. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations:

(a) Iraqi law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture, cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention, and assurance of the minimum standards of judicial guarantees. The institutions of government should benefit from a separation of powers to render the executive accountable to the citizenry in a clear and meaningful way, and furthermore, steps should be taken to restore the independence of the judiciary and to subject the executive to the rule of law and render executive action justiciable;

(b) The Government of Iraq should take steps to facilitate and guarantee the enjoyment of the freedoms of opinion, expression and association, in particular by decriminalizing the expression of oppositional views and relinquishing government controls over the media;

(c) The Government of Iraq should give particular attention to prison conditions in the country's prisons, and should take all the necessary steps to allow international humanitarian organizations to have access thereto and to communicate freely and confidentially with prisoners;

(d) The Government of Iraq should cease all discriminatory policies which interfere with the free and equal enjoyment of property, and should compensate appropriately those who have been arbitrarily or unjustly deprived of their property;

(e) The Government of Iraq should take urgent steps to put an end to the enforced displacement of persons. In the event that the relocation of citizens becomes necessary in circumstances which are in conformity with international norms, proper consultations should take place with the persons concerned, including the payment of appropriate compensation, reviewable by independent courts, and the taking of measures to ensure that food, housing facilities, proper medical care and social amenities, including appropriate arrangements for the education of children, are provided in adequate measure in the interest of the displaced persons;

(f) The Government of Iraq should continue to cooperate fully in the implementation of Security Council resolutions 986 (1995) and 1111 (1997). It is crucial that that cooperation be maintained, and that the Government of Iraq continue to facilitate the work of United Nations personnel in Iraq by ensuring

the free and unobstructed movement of observers throughout the country. The Government of Iraq should allow United Nations humanitarian observers to be stationed throughout the country and to move without notice or escorts;

(g) The Government of Iraq should ensure equitable distribution without discrimination to the Iraqi population of the humanitarian supplies purchased with the proceeds of Iraqi oil, in implementation of Security Council resolutions 986 (1995) and 1111 (1997). In addition, the Government of Iraq should take the necessary steps to ensure that necessary additional resources will be available for vulnerable groups throughout the country, in particular in southern Iraq;

(h) The Government of Iraq should accept the stationing of United Nations human rights monitors throughout the country to facilitate an improved information flow and to help in the independent verification of reports on the situation of human rights in Iraq.